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can be shown, will not prevent the insured from recovering on a fire insurance policy, even though his negligence was the cause of the fire. *Gove* v. *Insurance Co.* (1868) 48 N. H. 41; see *Germ. Ins. Co. of Freeport* v. *Goodfriend* (1906) 30 Ky. Law Rep. 218, 222, 97 S. W. 1098; *First Nat. Bank* v. *U. S. F. & G. Co.* (1912) 150 Wis. 601, 610, 137 N. W. 742. Similarly, the insured may recover on a marine insurance policy, although he was negligent in the management of the ship. *Western Assurance Co.* v. *Towing Co.* (1907) 105 Md. 232, 65 Atl. 637; see *Mathews* v. *Howard Ins. Co.* (1854) 11 N. Y. 9, 14. A beneficiary who has killed the insured may recover the insurance money if, at the time of the killing, he was insane. *Holdom* v. *A. O. U. W.* (1896) 159 Ill. 619, 43 N. E. 772. To debar a beneficiary from recovery, his act must be an intentional wrong, unless the contract provides otherwise. See *Holdom* v. *A. O. U. W., supra,* 625. It follows, therefore, that if an act causing the death of the insured is involuntary, although it may constitute a felony under a penal code, it is included among the risks assumed by an accident insurance company, unless there is an express stipulation to the contrary. *Schreiner* v. *High Court of I. C. O. of F.* (1890) 35 Ill. App. 576. This is not in contravention of the policy prohibiting a murderer from recovering as beneficiary, since the purpose of that rule seems to be neither to punish nor to discourage crime, but rather to prevent a fraud from being perpetrated on the deceased insured. Hence, the conclusion in the instant case is sound.

INSURANCE—SUBROGATION—RIGHTS OF INSURED.—The insured sued the insurer and the railroad for the value of cotton alleged to have been destroyed through the latter's negligence. The insurer claimed from the railroad whatever the plaintiff recovered from it. The lower court held the insurer liable to the plaintiff and the railroad not liable to the insurer. *Held,* judgment reversed; the insurer had a right of subrogation against the railroad. *Hartford Fire Ins. Co.* v. *Tripett* (Tex. Civ. 1920) 223 S. W. 305.

The right of subrogation exists because the insurance contract is one of indemnity, and it is derived from the insured alone. *St. Louis etc. Ry.* v. *Commercial Ins. Co.* (1891) 139 U. S. 223, 11 Sup. Ct. 554. Hence, where the insured, by contract with the person who subsequently causes the loss, agrees that the insurance shall be for his benefit, the right of subrogation is defeated. *Phoenix Ins. Co.* v. *Erie Transportation Co.* (1886) 117 U. S. 312, 6 Sup. Ct. 1176. In the absence of contrary stipulations in the insurance policy, such an agreement between the insured and a third party is no defense in an action by the insured against the insurer. *Jackson Co.* v. *Boylston Mut. Ins. Co.* (1885) 139 Mass. 508, 2 N. E. 103; but *cf. Fayerweather* v. *Phoenix Ins. Co.* (1890) 118 N. Y. 324, 23 N. E. 192; *Packham* v. *German Fire Ins. Co.* (1900) 91 Md. 515, 46 Atl. 1066. Moreover, at common law if the loss exceeded the insurance, the insurer could not sue because the insured's claim could not be split up. *Continental Ins. Co.* v. *H. M. Loud, etc. Co.* (1892) 93 Mich. 139, 53 N. W. 394. The insured sued and if the recovery, plus the insurance paid, exceeded the loss, he held the excess as trustee for the insurer. *Southern Bell Tel. Co.* v. *Watts* (1895) 66 Fed. 461. But under codes, both the insurer and the insured must join as plaintiffs. *Home Mut. Ins. Co.* v. *O. R. & N. Co.* (1891) 20 Ore. 569, 26 Pac. 857. After payment of the whole loss by the insurer, he only can sue. *Allen* v. *Chicago, etc. Ry.* (1896) 94 Wisc. 93, 68 N. W. 873. In England, the insurer is subrogated to the insured's contract claims collateral to the property destroyed, even against persons not responsible for the loss. *Castellain* v. *Preston* (1883) 11 Q. B. D. 380. But the opposite and sound result has been reached in the United States. *Michael* v. *Prussian National Ins. Co.* (1902) 171 N. Y. 25, 63 N. E. 810. Since the right of subrogation arises out of a contract dealing only with indemnity for a loss,

it cannot logically be extended beyond claims based upon responsibility for such loss. Upon either theory, the insurer in the instant case had a right of subrogation enforceable under the code.

JOINT ADVENTURERS—BAD FAITH—FORFEITURE.—A had an option to purchase mining property for $3000. It is conceded that the property was worth $6000. He concealed the option and induced B to join with him in purchasing the property for $6000. Each gave the vendor a check for $3000, but the vendor secretly returned A's check. A and B formed a corporation and transferred the land to it, each taking back shares in proportion to his interest in the land. B brought a bill in equity for the cancellation of A's shares. *Held,* cancellation decreed. *Moe* v. *Lowry* (Colo. 1920) 194 Pac. 363.

Joint adventurers owe each other the utmost good faith. *Selwyn* v. *Waller* (1914) 212 N. Y. 507, 106 N. E. 321; see *Merritt* v. *Joyce* (1912) 117 Minn. 235, 240, 135 N. W. 820. That being true, B had a right to know of A's option, and, in the absence of any stipulation to the contrary, to get his half of the property for $1500. That A's option was worth $3000 seems clear. *Masberg* v. *Granville* (1917) 201 Ala. 5, 75 So. 154. But as to B, A has waived his option by failing to disclose it at the time of entering into the agreement. That being true, B is entitled to $1500 from A; but A is entitled to his half of the land, because B agreed he should have half. To give B all the land works a penalty or forfeiture on A, which is against the policy of the law. No jurisdiction, for example, deprives a defrauding trustee, who combines his own with the *cestui's* money in an investment, of the amount of his individual investment if the *res* is of sufficient value to reimburse both the *cestui* and the trustee. *White* v. *Drew* (1868) 42 Mo. 561; *Bohle* v. *Hasselbroch* (1902) 64 N. J. Eq. 334, 51 Atl. 508. In a few jurisdictions one who willfully breaks a contract for services after part performance is allowed a quasi-contractual action for the value of services performed, but is, of course, liable in damages for the breach. *Britton* v. *Turner* (1834) 6 N. H. 481; *contra, Nelichka* v. *Esterly* (1882) 29 Minn. 146, 12 N. W. 457. One who willfully and tortiously confuses his goods with those of another for the purpose of defrauding the latter is allowed to take out his goods if he can identify them specifically. See *Levyeau* v. *Clements* (1899) 175 Mass. 376, 379, 56 N. E. 735; *Claflin* v. *Continental Jersey Wks.* (1890) 85 Ga. 27, 46, 11 S. E. 721. And if they are fungible and he can prove his proportion, he becomes a tenant in common with the injured party. See *Claflin* v. *Continental Jersey Wks., supra; Hesseltine* v. *Stockwell* (1849) 30 Mo. 237, 242. In all these cases the law simply requires the wrongdoer to make the injured party whole again. There seems to be no sound reason why the decision in the principal case should have gone any further.

JUDGES—DISQUALIFICATION FOR PREJUDICE—SUFFICIENCY OF AFFIDAVIT.—The defendants, naturalized Germans and Austrians indicted under the Espionage Act, filed affidavits as provided in Section 21 of the federal Judiciary Code, alleging personal bias of the trial judge because, prior to the trial, he had declared himself strongly prejudiced against German-Americans. The judge filed an affidavit showing that he had never made the imputed utterances and denied prejudice. From a refusal to grant a motion for the assignment of another judge, the defendant appealed. *Held,* Justices Day, McReynolds and Pitney dissenting, since the affidavit contained allegations which, if true, would support the charge of bias, it was error to deny the motion. *Berger v. United States* (1921) 41 Sup. Ct. 230.

Many states have provided by statute for disqualifying judges for bias. See (1920) 20 COLUMBIA LAW REV. 594; (1916) 16 COLUMBIA LAW REV. 162. In some, the judge may himself decide, subject to appeal, the existence or absence